

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IQE KC, LLC,)
Plaintiff,)
)
)
vs.) Miscellaneous Action
) No. 1:24-mc-91053-AK
)
AKOUSTIS, INC. AND AKOUSTIS)
TECHNOLOGIES, INC.,)
Defendant.

BEFORE: MAGISTRATE JUDGE JENNIFER C. BOAL

MOTION HEARING

John Joseph Moakley United States Courthouse
1 Courthouse Way
Boston, MA 02210

April 24, 2024
2:00 p.m.

Transcribed by Valerie A. O'Hara
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APPEARANCES:

For the Plaintiff:

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Holland & Knight, LLP, by GORDON P. KATZ, ESQ.,
10 St. James Avenue, Boston, Massachusetts 02116;

For the Defendants:

McKool Smith, P.C., by JAMES E. QUIGLEY, ESQ.,
and JOHN B. CAMPBELL, ESQ., 303 Colorado Street, Suite 2100
Austin, Texas 78701.

PROCEEDINGS

THE CLERK: Today is April 24th, 2024 and we are on the record in the matter of IQE KC, LLC vs. Akoustis.

Technology, Inc., Case Number 24-MC-90153.

Will counsel please identify yourselves for the record.

MR. NIEMEIER: This is Robert Niemeier with Sterne, Kessler, Goldstein & Fox on behalf of plaintiff, IQE.

10:26AM MR. KATZ: And Gordon Katz from Holland & Knight for IQE.

MR. QUIGLEY: James Quigley from McKool Smith, and with me is John Campbell from McKool Smith as well.

THE COURT: Good afternoon, everyone. And I did just want to mention before we start that Ms. Early, who I understand has been involved in the case, she and I serve on an editorial board together. I don't think that's a basis for recusal but I thought I would just mention it in case anyone had any questions about that.

10:29AM So it is IQE's motion, so I'll hear from you first.

MR. NIEMEIER: I'll just pose this now. So there was a request to transfer from Akoustis, so I don't know if you wanted to hear about that first or if you would just like us to talk about the merits of the motion.

1 THE COURT: However you would like to proceed.

2 MR. NIEMEIER: Okay, that's fine. We'll proceed
3 and then we can take whatever issues on rebuttal we need
4 to.

5 So we're here today on IQE's motion to quash the
6 subpoena. The subpoena was issued by Akoustis on a
7 related patent litigation in Eastern District of Texas.

8 The subpoena seeks IQE's most sensitive trade
9 secrets. It seeks financial information, it seeks patent
10:33AM 10 evaluation information, all of which is overbroad, much of
11 which is wholly irrelevant to the claims in the underlying
12 action, and all of which is extremely burdensome, unduly
13 so to IQE, and so on that basis, the subpoena should be
14 quashed as unduly burdensome. It should also be quashed
15 as calling for the disclosure of IQE's trade secrets and
16 confidential information.

17 I'd like to explain a little. So the subpoena I
18 think can be broken down into two sort of chunks of
19 documents. One is the growth recipes and the other sort
10:40AM 20 of everything else, other technical documents, financials
21 under communications, that sort of thing.

22 The growth recipes are essentially the secret
23 sauce to IQE's business. IQE makes wafers that are used
24 in semiconductors. There are very few companies in the
25 world that do this. It produces these wafers by building

1 layers, sometimes only atoms thick, and specific
2 crystalline structures on top of a substrate, and this is
3 very, very difficult to do. It requires a lot of trial
4 and error. It takes a long time to develop this
5 technology.

6 The growth recipe is essentially the culmination
7 of that. It says here's how you build this wafer. It has
8 the steps that you would perform, how long you perform for
9 it, what temperature, what reactants are used, everything
10:44AM 10 you would need to know.

11 This is -- it can't really be overstated how
12 sensitive this information is to IQE. Were it to get out,
13 it would considerably undermine IQE's position in the
14 market, and the issue here is Akoustis has proposed
15 treating it as source code, which is the highest level of
16 protection under the protective order in the underlying
17 case in Texas.

18 The issue is the growth recipes for each wafer
19 could be reduced to a matter of a few pages. Often in
10:46AM 20 protective orders for source code, you have limitations on
21 printing on the order of hundreds pages of total or 20 or
22 50 or some number of pages consecutively.

23 In that case, it would be possible to print out
24 the entire recipe, and so that would pose a much greater
25 danger of disclosure and competitive harm to IQE vs. your

1 traditional source code, which has little value and
2 discrete chunks that may be only one or two or 10 pages of
3 something that could be millions of pages, like a
4 traditional source code often is.

5 So there is really no way under the protective
6 order to adequately protect this. The protective order
7 also --

8 THE COURT: Just so I understand, I thought in
9 your motion papers you had suggested that there were
10:48AM 10 protections that you might want that might answer your
11 concerns but that the other side had not agreed to it. So
12 is what you're saying now is that there are no
13 protections?

14 MR. NIEMEIER: So there are no protections that
15 will adequately protect it. What we had offered
16 previously was the one product, we would make that recipe
17 available, and that was sort of as a way to cooperate and
18 hopefully, you know, resolve this and avoid the risk that
19 all of the growth recipes would be subject to disclosure
11:08AM 20 and potential, you know, leakage.

21 So the measures that we had suggested for that
22 recipe, it would not be our position that they would
23 adequately protect the recipe. That was a compromise we
24 were willing to make to avoid the risk of a larger
25 disclosure.

1 So the proposed also does not apply to trial
2 proceedings, it covers discovery. I believe Judge
3 Gilstrap is presiding over the case in Texas, and it would
4 be entirely within his discretion to leave the courtroom
5 open at trial or to permit disclosure of any confidential
6 information that he saw fit, and so IQE really has no way
7 to ensure that even if the folks at Akoustis and everyone
8 else involved in that case, you know, abided by the
9 protective order stringently that these materials wouldn't
11:13AM 10 ultimately be disclosed either to the business people at
11 Akoustis or to the defendant Qorvo or to anybody who was
12 attending that trial, and we have no way to protect that.

13 They've suggested in their briefing that we
14 could attend trial and represent our own interests in that
15 respect, but at the end of the day, it will be the
16 District Judge who makes the call, so even if we were
17 there, which itself would be a burden, we're not
18 protected.

19 So the lack of adequate protections in the
01:01PM 20 protective order and the lack of ways that it could be
21 modified to offer that protection, that constitutes an
22 enormous burden to IQE, and so that, we would argue,
23 constitutes reason to quash the motion and would also
24 constitute a basis to quash the motion under the trade
25 secret exception under Rule 45.

1 THE COURT: So if I understand correctly, there
2 are no additional protections that you've asked for from
3 the other side that they have not agreed to?

4 MR. NIEMEIER: We had proposed, I believe,
5 limiting, prohibiting printing of the pages.

6 THE COURT: But with respect to the one product?

7 MR. NIEMEIER: With respect to the one product.

8 THE COURT: But you haven't proposed anything
9 with respect to all the products or the other information?

01:03PM 10 MR. NIEMEIER: That's correct.

11 THE COURT: Okay. Anything else?

12 MR. NIEMEIER: Would you like me to address the
13 transfer motion now?

14 THE COURT: Yes, that would be fine.

15 MR. NIEMEIER: So the transfer motion, Rule 45
16 requires there to be exceptional circumstances to transfer
17 subpoena from the court of compliance to the issuing
18 court. Here, I think it's pretty clear there are no
19 exceptional circumstances.

01:04PM 20 Akoustis has pointed to a decision made by the
21 Judge in Texas relating to the scope of the accused
22 products, and they're concerned that that issue would need
23 to be relitigated in this court. That is not the case.
24 We are not disputing the scope of the accused products at
25 this point, so that court's decision wouldn't have any

1 bearing. There wouldn't be any chance of an inconsistent
2 decision.

3 They've also indicated that they've issued a
4 similar subpoena to the one issued to IQE to another
5 party, a competitor of IQE's called Wolfsped, and the
6 Wolfsped subpoena, I understand, is or was at the time of
7 briefing being negotiated, and there was potential that
8 Wolfsped could challenge that subpoena similar to how
9 we're here today.

01:07PM 10 And they suggest that these subpoenas should be
11 transferred to Texas to avoid having to relitigate sort of
12 the same issues in multiple venues, but I don't think
13 that's an issue. As far as we know, Wolfsped has not
14 filed a motion to quash or sought a protective order for
15 the subpoena, and even if they did, you know, the factual
16 underpinnings of each party's situation are different, and
17 they would need to be resolved on the merits regardless of
18 whether both motions were heard in Texas or his motion was
19 here and the Wolfsped one heard in its compliance court.

01:09PM 20 THE COURT: So in terms of also the exceptional
21 nature, I mean, you've made argument that the gross
22 recipes are something of particular importance to IQE, so
23 why wouldn't that be an exceptional circumstance that this
24 product is so important to the company that it really, the
25 issues with respect to it should be decided by the court

1 that's going to conduct the trial and you can make them
2 aware of these exceptional issues?

3 MR. NIEMEIER: I think the growth recipes are
4 exceptional to IQE as far as its concern with this case.
5 I don't think that would rise to an exceptional
6 circumstance in the transfer analysis. I think generally
7 that's referring to whether or not decisions in this court
8 would contradict or impinge on the management of the case
9 from the court where the case is pending.

01:11PM 10 I think this court would have all the information
11 in front of it that it would need to make a decision on
12 that. I don't believe that the court in Texas would have
13 any further familiarity or competency with the issues to
14 decide.

15 THE COURT: But you would be making a pitch for
16 how that court would govern the trial itself?

17 MR. NIEMEIER: I'm not sure, how do you mean?

18 THE COURT: Well, in your argument, let's say the
19 case was going to be heard by Judge Kelley, you would be
01:11PM 20 making an argument that you needed extra protections at
21 trial?

22 MR. NIEMEIER: I see. Yes, that's correct.

23 THE COURT: I mean, I'm not really in a position
24 to bind the trial court on that.

25 MR. NIEMEIER: Certainly. And I think ultimately

1 if we had to produce these materials, I think we would go
2 back and work with Akoustis to try and resolve that, you
3 know, by agreement without involving the Court, but, yes,
4 it's not clear to me as a nonparty whether we would have
5 any ability to press for modifications to the protective
6 order in Texas, whether or not the case was transferred
7 there or not.

8 THE COURT: Right, perhaps even better reason to
9 have this argued in front of the court there. So in terms
01:12PM 10 of Akoustis filed a judicial notice I believe on the same
11 day or around the same day as your reply motion was filed.
12 Do you want to comment on the judicial notice and the
13 purposes for which Akoustis said they filed it?

14 MR. NIEMEIER: My understanding is they filed the
15 request for judicial notice of the IPR petition that was
16 filed by IQE. We don't have any objection to the request
17 for judicial notice. I think it's public record that IQE
18 filed the IPR petition against the underlying patent.

19 THE COURT: Right. I think, I could be wrong,
01:13PM 20 but I took their argument to be that you're not a
21 disinterested party in the litigation.

22 MR. NIEMEIER: And I would disagree with that. I
23 think it's a little bit backwards to say that because we
24 were subpoenaed and, you know, are being pushed to produce
25 the sensitive information and then in response to that

1 file these motions and filed the IPR that we become an
2 interested party.

3 You know, the interest that I think they're
4 suggesting arises out of this subpoena and IQE's interest
5 of avoiding disclosure of information. I think it would
6 be a little bit backwards to suggest that by imposing in
7 whatever way you can request for this discovery that you
8 become interested and then subject to a broader scope of
9 discovery.

01:17PM 10 THE COURT: I could be wrong, I thought they were
11 arguing sort of the opposite because you filed the action
12 in front of the patent board that that was a showing of
13 interest that affected how I should view your arguments
14 here.

15 MR. NIEMEIER: So the IPR was filed after the
16 subpoena, and after all of this sort of we couldn't reach
17 an agreement and there was a motion to quash. It's
18 another attempt certainly to prevent having to disclose
19 this information. If the IPR were successful, it might
01:18PM 20 dispose of the underlying action, so I think our position
21 would be that it shouldn't be held against us that we're
22 imposing the subpoena and the discovery efforts with what
23 means we have available.

24 THE COURT: So, in terms of burden, and I don't
25 believe I heard you talk about burden. If I understand

1 correctly, you would be producing the documents
2 electronically, correct?

3 MR. NIEMEIER: So for the documents, leaving
4 aside the growth recipes, yes.

5 THE COURT: Right.

6 MR. NIEMEIER: They would be, to the extent
7 they're in electronic form, which I believe most of them
8 would be, we would produce them electronically. For the
9 growth recipes, if we were in a position where we had to
01:19PM 10 produce them, we would likely do some sort of an
11 inspection, either at our office in Washington D.C. or at
12 some other location, and we would need to negotiate, I
13 think, whether and to what extent any printing of those
14 could be done or copying, and so those copies would
15 probably be in paper format, as is often done with source
16 code.

17 THE COURT: Okay. And you have made some
18 allusion to some potential witnesses testifying in Texas,
19 but at this point there's no request for testimony?

01:22PM 20 MR. NIEMEIER: Correct. The subpoena did not
21 include a request for testimony.

22 THE COURT: And I think you had made an argument
23 that Akoustis could get the information, a lot of the
24 information from Qorvo, but I guess how does that apply to
25 the growth recipes, which sounds like you haven't shared

1 with anyone, according to your papers?

2 MR. NIEMEIER: That's correct. They would not be
3 able to obtain the entirety of the information that's in
4 the growth recipes from Qorvo, at least we would hope not.
5 They are able to get information from Qorvo on sort of the
6 structure of the products that are being accused. They're
7 able to get samples of the products, I would presume, from
8 Qorvo that they could then perform the sort of testing
9 that they did in the complaint, but they would not be able
01:23PM 10 to get exactly the information that's in the growth
11 recipes from Qorvo.

12 THE COURT: All right. Anything else?

13 MR. NIEMEIER: On burden, I would just say, you
14 know, I think in their briefing, they made light of sort
15 of the collecting of the growth recipes and said, you
16 know, it would be as simple somebody walking to the
17 machine and downloading it and then sending it off. I
18 think it's a little more involved than that.

19 So these machines, the growth recipes are only
01:24PM 20 stored on the reactors that are producing these materials.
21 They're not saved in any kind of other location, and the
22 reactors are behind sort of the secure perimeter in the
23 facility, and the only people who have access are the
24 technicians who operate the reactors, and so what would
25 have to happen is a technician would have to shut down

1 their machine to travel to these other reactors to
2 retrieve the recipes one-by-one, and, you know, as they're
3 manufacturing, as the reactors are running, the
4 technicians have to stay and monitor it, and since this
5 technician would have to leave to perform the collection,
6 that machine would have to be shut down, and so that would
7 be time when IQE is not able to manufacture using that
8 equipment, and so there is some fairly substantial burden
9 having a technician go from machine to machine and
01:27PM 10 download each of these recipes individually, and there's
11 also a burden of identifying which wafers are involved.

12 The supplied products definition in the subpoena
13 is quite broad, and it doesn't tie anything to particular
14 Qorvo models, so in the underlying litigation, I
15 understand Akoustis has accused a long list of several
16 thousand Qorvo products. IQE doesn't have visibility into
17 what Qorvo product numbers correspond to which wafer, and
18 so what we have to do is go through all of the wafers that
19 have been sold to Qorvo and figure out whether they meet
01:29PM 20 sort of the functional definition that's in the subpoena
21 for the supplied products, and so that would be sort of a
22 manual process as well.

23 THE COURT: But I have no concrete estimate of
24 the cost of that burden, right, before me?

25 MR. NIEMEIER: Yes. I don't know what it would

1 cost. It would be a number of person hours, and I don't
2 have in front of me what it would cost for the time the
3 reactor was down.

4 THE COURT: Okay. Thank you. Yes. Who is going
5 to speak on behalf of Akoustis?

6 MR. QUIGLEY: Your Honor, Jim Quigley of McKool
7 Smith. Let me actually, is it okay if I pass up some
8 slides?

9 THE COURT: No.

01:32PM 10 MR. QUIGLEY: No slides?

11 THE COURT: No, I find that distracting during
12 oral agreement and not typically very useful.

13 MR. QUIGLEY: Sure. Well, I'll start at the
14 beginning of where I was going to start, and I'll hit on
15 some of the points opposing counsel mentioned just now and
16 some of the issues that you raised.

17 Just as some background, Akoustis sued Qorvo in
18 the Eastern District related to a patent that a prior
19 Qorvo entity was the exclusive licensee on. Akoustis, for
01:33PM 20 all good reasons, believed Qorvo was making this stuff
21 because Qorvo's website says Qorvo was making this.

22 So we sued Qorvo in the Eastern District where
23 their facility is, and we asked Qorvo for information like
24 growth recipes, manufacturing details, and Qorvo says we
25 don't have it, actually, you know, you should talk to our

1 wafer suppliers, one of them is IQE and pointed us to, I
2 believe it's in the record as one of our exhibits, a press
3 release from 2012 where a wafer facility, it doesn't say
4 it's GAN but a wafer facility was transferred from Qorvo
5 to IQE.

6 THE COURT: And how many suppliers are we talking
7 about? I understand there's Wolfspeed as well, but are
8 there others?

9 MR. QUIGLEY: Those are the two that are being
01:38PM 10 focused on right now.

11 THE COURT: Okay.

12 MR. QUIGLEY: And so what we did is we went to
13 the suppliers with subpoenas, and I think with Wolfspeed
14 we tried to informally work it out because there were some
15 other negotiations that had already happened, but they
16 have been subpoenaed as well, asked them, you know, for
17 this information.

18 At this point, we've actually started to get some
19 growth recipe information from Wolfspeed, you know, they
01:39PM 20 printed it out and FedExed it to our expert, but IQE on
21 the other hand has been more resistant here, and, you
22 know, so we served the subpoena on IQE in October 2023.
23 We got objections, we tried to work with IQE to get
24 something. IQE took the position, like Qorvo was at that
25 same time, that the only accused product in the case was

1 the QPD 1000 product, so IQE and Qorvo refused to give us
2 anything beyond that.

3 You know, January 10th of 2024, we have a hearing
4 in front of Judge Payne and Judge Payne, you know, denies
5 Qorvo's motion to strike by saying, of course, the other
6 products are at issue. You're going to have to turn over
7 that information.

8 We told IQE this, so IQE promptly went from
9 offering one growth recipe in Washington D.C. to offering
01:41PM 10 nothing at all and filing a motion in this court.

11 I want to be clear, you know, we've never taken
12 the position we won't agree to further protections. Our
13 issue in December and in January were that we weren't
14 going to send an expert 2500 miles on an airplane to look
15 at one recipe when there are others that are at issue.
16 And I don't think that there are dozens and dozens and
17 dozens of wafers at issue here, my understanding is it's
18 handfuls.

19 Now, there may be, you know, the need to grab
01:43PM 20 different versions of those recipes for those handfuls of
21 wafers, but this isn't, you know, thousands and thousands
22 of different wafers that are being made as far as I'm
23 aware. IQE can correct me if I'm wrong. So I think that
24 goes, you know, to the unduly burdensome argument that IQE
25 is making. It's not actually that many wafers.

1 THE COURT: And do you anticipate deposition
2 testimony or other testimony?

3 MR. QUIGLEY: So we haven't served the deposition
4 subpoena, and to the extent we do, the way I would
5 typically handle this is I would look for a declaration
6 just authenticating whatever the documents are that you
7 provided. You know, one of the points I wanted to raise,
8 and, you know, counsel hit on this, and you, your Honor,
9 hit on this, I don't think IQE is a truly disinterested
01:45PM 10 party in this case.

11 THE COURT: Well, I think it's your argument.

12 MR. QUIGLEY: Well, he hit on it and responded to
13 it --

14 THE COURT: Yes.

15 MR. QUIGLEY: -- but, you know, mere days after
16 the briefing on this motion to quash is complete, IQE
17 files an IPR petition, and I don't know how acquainted
18 your Honor is with IPR petitions, but it's a \$40,000
19 filing fee, probably tens of thousands of dollars on
02:24PM 20 expert fees, maybe another six figures in attorney's fees.

21 I mean, that's a lot of money for a disinterested
22 third party to be spending fighting a patent, and, you
23 know, coincidentally, IQE hired the same expert that Qorvo
24 is using in another case for that IPR. Coincidentally,
25 IQE asserted the same primary prior art references that

1 Qorvo is asserting in the Eastern District case against
2 the same patent.

3 And so, you know, from what we see over time,
4 there is some coordination going on between IQE and Qorvo.
5 I don't know what that is. It's a customer supplier
6 relationship. It could be close, it could be some, you
7 know, some fighting, but IQE is certainly in the loop on
8 stuff that's happening, and so to the extent there are
9 concerns on, you know, harm that's going to befall IQE
02:28PM 10 here, you know, by disclosing these recipes, I would just
11 say that there's no competitors, IQE's competitors are not
12 involved in this case. This is Qorvo and Akoustis. There
13 hasn't been an allegation that there are actually
14 competitors.

15 Akoustis has always been willing to agree to
16 additional protections for these growth recipes. I would
17 expect nothing less. I mean, I agree these are sensitive.
18 We'll review them on a source code computer. We won't
19 print more than we need to print. The Eastern District
02:29PM 20 protective order that's I think in the record as our
21 Exhibit 28 has, you know, specific requirements that you
22 not print things just to review them elsewhere.

23 THE COURT: And what about the argument that the
24 protective order only covers precisely discovery?

25 MR. QUIGLEY: So, that's correct, there's a

1 paragraph in the protective order that says that, you
2 know, parties can use designated material at trial. I
3 agree. I think as your Honor noted, that may be, you
4 know, a reason to transfer, you know, this motion to quash
5 or this subpoena to the Eastern District because the
6 Judges there are going to be able to rule on those
7 protection issues at trial.

8 And we, for Akoustis, are more than willing to
9 work with IQE to seal the courtroom and that sort of
02:30PM 10 thing. I have no interest in having an open courtroom
11 when somebody's sensitive information is being discussed.
12 That's not what I would like to do.

13 THE COURT: What is the status of the Wolfsped
14 subpoena? I understand there's been some discussion that
15 you've been able to work some of the issues out.

16 MR. QUIGLEY: We have received some growth recipe
17 information. We've worked with them to narrow down what
18 it is we're going to receive, and I believe we're
19 receiving more after we finalize some of the details.

02:31PM 20 THE COURT: And what in terms of burden on IQE,
21 what, if you know, is the Eastern District of Texas's
22 policy or maybe it's these particular Judges's policies
23 with respect to conducting a hearing by Zoom?

24 MR. QUIGLEY: I don't know that offhand, your
25 Honor, I apologize. I do want to discuss the burden issue

1 just momentarily. I heard counsel explaining, you know,
2 what some of the burden is. I think if you go and look at
3 Exhibit 3 to their motion, there's not actually that
4 detail about the burden, it just says there's going to
5 need to be an extraction and a conversion and sending
6 files to counsel.

7 I don't think there's anything in the record
8 about the time or expense or, you know, how tough it
9 actually is. You know, obviously, we'll work with IQE to
02:33PM 10 make it as simple as possible just to get that information
11 on a source code review computer, somewhere that is
12 convenient for IQE.

13 THE COURT: And what about IQE's argument that
14 the magistrate judge's decision in Texas about the accused
15 products is not similar to the issue that's before me in
16 terms of relevance?

17 MR. QUIGLEY: So I do disagree. I heard earlier,
18 and I think this is a quote, that IQE is not disputing the
19 scope of the accused products, but I think IQE actually
02:35PM 20 was doing that in its papers in this case trying to
21 suggest that the materials that Akoustis is entitled to
22 via subpoena are narrower than in the Eastern District.

23 I think if you look at accused instrumentalities
24 definition and supply products definition, both of them
25 have a substantive component, which is specific epitaxial

1 levels with specific substrates, and they both have a time
2 component from April 2017 onwards. We are seeking
3 material from IQE that is overlapping with the material
4 that we sought from Qorvo that Qorvo doesn't possess.

5 THE COURT: And IQE also says you should get
6 certain information from Qorvo, so, for example, some of
7 the financial documents seem to be readily available from
8 Qorvo.

9 MR. QUIGLEY: So I agree there's some information
02:36PM 10 that we can obtain from Qorvo. I think some of these
11 topics cover things that Qorvo may have but IQE is going
12 to uniquely possess. I can simplify things. We will
13 focus on topics 3, 4, 6 and 16, which are the growth
14 recipe topics according to IQE, and I can't get that from
15 anyone besides IQE.

16 THE COURT: Meaning that you're not contesting
17 the motion to compel except on 3, 4, 6 and 16 or you're
18 just --

19 MR. QUIGLEY: The motion to quash.

02:38PM 20 THE COURT: The motion to quash.

21 MR. QUIGLEY: We'll drop the rest of the
22 requests.

23 THE COURT: Okay. Let me see if I have anything
24 else. And just to be clear, I think this is consistent
25 with what IQE said, but you're unable to obtain the

1 information concerning growth recipes from any other
2 source?

3 MR. QUIGLEY: Correct. We can do reverse
4 engineering, like we talked about in the papers, but
5 reverse engineering can tell you really basic information.
6 You know, if you say I want to know if there's carbon or
7 hydrogen or nitrogen in it, it can give you some idea of
8 whether that material is in there and where it is, but it
9 can't tell you things like temperature and pressure and
02:41PM 10 specific reactants that were used.

11 THE COURT: Thank you. Anything further from
12 IQE?

13 MR. NIEMEIER: Yes, just briefly. Akoustis, they
14 mentioned a facility, I think, the manufacturing facility
15 that was transferred from Qorvo to IQE. That was a number
16 of years ago. That facility I understand has since been
17 closed, so there are no wafers involved being made there,
18 and I don't think it has any relevance as to whether or
19 not we're an interested party.

02:42PM 20 You know, he mentioned the cost of the IPRs. I
21 wanted to underline that's correct. It's very expensive,
22 and that's just how seriously IQE is taking the disclosure
23 of this information, that these costs are worth it to
24 their mind because of the risk of what could happen if
25 these growth recipes get out.

1 On the transfer issue, I think you have raised
2 the point of wouldn't it make sense to transfer if there's
3 going to be a fight over the protective order there? I
4 think I would just point out that if the subpoena were
5 quashed, there wouldn't be any need to get to the issue of
6 revising the protective order because we wouldn't have any
7 qualm with the current order, there wouldn't be anything
8 to produce.

9 And then just on the reverse engineering point,
02:45PM 10 the analysis that they performed on the complaint, I
11 think, you know, they pointed out there's certain things
12 from that that we can't find, and they're saying that
13 these are necessary for the infringement analysis, but
14 they filed a complaint based on those reverse engineering,
15 and they have their obligation to believe there's a basis
16 for accusing an infringement.

17 They're saying that this testing didn't give them
18 information on X, Y, Z limitations from the patent, then
19 what was the basis for filing the complaint? I think it's
02:46PM 20 a little bit two-faced to come in now and say this testing
21 wasn't sufficient for us to show infringement and we need,
22 you know, this very sensitive information from you, IQE to
23 build our case out.

24 THE COURT: All right. Thank you, I will take it
25 under advisement.

THE CLERK: Court is in recess. All rise.

(Whereupon, the hearing was adjourned at 2:35 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript,
Pages 1 through 26 inclusive, was recorded by me
stenographically at the time and place aforesaid in
Miscellaneous Action No. 1:24-mc-91053-AK, IQE KC, LLC, vs.
AKOUSTIS, INC. AND AKOUSTIS TECHNOLOGIES, INC.,
and thereafter by me reduced to typewriting and is a true and
accurate record of the proceedings.

Dated April 30, 2024.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER